



Eden Environmental Citizen's Group, LLC

July 19, 2019

Via US Mail, Certified USPS Tracking No. 9407 1118 9956 1479 8233 43

Charles Holdren
Fontana Wood Treating, Inc.
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Via US Mail and Email

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Via US Mail

CT Corporation System
Agent for service
Fontana Wood Treating, Inc.
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Re: 60-Day Notice of Violations and Intent to File Suit Under the Federal Water Pollution Control Act ("Clean Water Act")

To Officers, Directors, Operators, Property Owners and/or Facility Managers of Fontana Wood Treating, Inc.:

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This letter is to give legal notice that EDEN intends to file a civil action against Fontana Wood Treating, Inc., formerly known as California Cascade-Fontana (“Discharger”) and CanWel Building Materials Group, Ltd., its parent corporation, as well as Amar S. Doman, its Chief Executive Officer, for violations of the Federal Clean Water Act (“CWA” or “Act”) 33 U.S.C. § 1251 *et seq.*, that EDEN believes are occurring at the Fontana Wood Treating facility located at 8395 Sultana Avenue in Fontana, California (“the Facility” or “the site”).

EDEN is an environmental citizen’s group established under the laws of the State of California to protect, enhance, and assist in the restoration of all rivers, creeks, streams, wetlands, vernal pools, and tributaries of California, for the benefit of its ecosystems and communities.

EDEN formally registered as a limited liability company (LLC) association with the California Secretary of State on June 22, 2018; however, since at least July 1, 2014, EDEN has existed as an unincorporated environmental citizen’s association with members who remain associated with EDEN as of the date of this Notice.

As discussed below, the Facility’s discharges of pollutants degrade water quality and harm aquatic life in the Facility’s Receiving Waters, which are waters of the United States and described in Section II.B, below. EDEN has members throughout California. Some of EDEN’s members live, work, and/or recreate near the Receiving Waters and use and enjoy the Receiving Waters for surfing, kayaking, camping, fishing, boating, swimming, hiking, cycling, bird watching, picnicking, viewing wildlife, and/or engaging in scientific study.

At least one of EDEN’s current members has standing to bring suit against the Discharger, as the unlawful discharge of pollutants from the Facility as alleged herein has had an adverse effect particular to him or her and has resulted in actual harm to the specific EDEN member(s).

Further, the Facility’s discharges of polluted storm water and non-storm water are ongoing and continuous. As a result, the interests of certain individual EDEN members have been, are being, and will continue to be adversely affected by the failure of Fontana Wood Treating to comply with the General Permit and the Clean Water Act.

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency (“EPA”), and the State in which the violations occur.

As required by CWA section 505(b), this Notice of Violation and Intent to File Suit provides notice to the Discharger of the violations which have occurred and continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and

Intent to File Suit, EDEN intends to file suit in federal court against the Discharger under CWA section 505(a) for the violations described more fully below.

I. THE SPECIFIC STANDARD, LIMITATION, OR ORDER VIOLATED

EDEN's investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the General Industrial Storm Water Permit issued by the State of California (NPDES General Permit No. CAS000001 [State Water Resources Control Board ("SWRCB")] Water Quality Order No. 92-12-DWQ, as amended by Order No. 97-03-DWQ ("1997 Permit") and by Order No. 2014-0057-DWQ ("2015 Permit") (collectively, the "General Permit").

Information available to EDEN, including documents obtained from California EPA's online Storm Water Multiple Application and Reporting Tracking System ("SMARTS"), indicates that on or around July 7, 2015, Fontana Wood Treating submitted a Notice of Intent ("NOI") to be authorized to discharge storm water from the Facility. Fontana Wood Treating's assigned Waste Discharger Identification number ("WDID") is 8 36I025784.

As more fully described in Section III, below, EDEN alleges that in its operations of the Facility, the Discharger has committed ongoing violations of the substantive and procedural requirements of the Federal Clean Water Act, California Water Code §13377; the General Permit, the Regional Water Board Basin Plan, the California Toxics Rule (CTR) 40 C.F.R. § 131.38, and California Code of Regulations, Title 22, § 64431.

II. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

The location of the point sources from which the pollutants identified in this Notice are discharged in violation of the CWA is Fontana Wood Treating's permanent facility address of 8395 Sultana Avenue in Fontana, California.

The Fontana Wood Treating facility is a wood preserving facility. Facility operations are covered under Standard Industrial Classification Code (SIC) 2491.

Based on the EPA's Industrial Storm Water Fact Sheet for Sector A – Timber Products Facilities, polluted discharges from operations at the Facility contain bark and wood debris, total suspended solids (TSS), arsenic, copper, chromium, ammonia, biochemical oxygen demand (BOD), chemical oxygen demand (COD, and oil and grease ("O&G")). Many of these pollutants are on the list of chemicals published by the State of California as known to cause cancer, birth defects, and/or developmental or reproductive harm.

Information available to EDEN indicates that the Facility's industrial activities and associated materials are exposed to storm water, and that each of the substances listed on the EPA's Industrial Storm Water Fact Sheet is a potential source of pollutants at the Facility.

B. The Affected Receiving Waters

The Facility discharges into the Santa Ana River ("Receiving Waters").

The Santa Ana River is a water of the United States. The CWA requires that water bodies such as the Santa Ana River meet water quality objectives that protect specific "beneficial uses." The Santa Ana Regional Water Board has issued its *Water Quality Control Plan for the Santa Ana River Basin* ("Basin Plan") to delineate those water quality objectives.

The Basin Plan identifies the "Beneficial Uses" of water bodies in the region. The Beneficial Uses for the Receiving Waters downstream of the Facility include: Municipal and Domestic Supply (MUN), Agricultural Supply (AGR), Industrial Process Supply (PRO), Industrial Service Supply (IND), Navigation (NAV), Water Contact Recreation (REC-1), Non-contact Water Recreation (REC-2), Warm Freshwater Habitat (WARM), Cold Freshwater Habitat (COLD), Wildlife Habitat (WILD), Migration (MIGR), and Spawning, Reproduction, and/or Early Development (SPWN).

Polluted storm water and non-storm water discharges from industrial facilities, such as the Facility, contribute to the further degradation of already impaired surface waters, and harm aquatic dependent wildlife.

III. VIOLATIONS OF THE CLEAN WATER ACT AND GENERAL PERMIT

A. Deficient SWPPP and Site Map

Fontana Wood Treating's Storm Water Pollution Prevention Plan ("SWPPP") is inadequate and fails to comply with the requirements of the General Permit as specified in Section X of Order No. 2014-0057-DWQ, as follows:

- (a) The Site Map does not comport with Section X.E of the General Permit. Specifically, the Site map fails to:
 - (1) accurately depict the direction of storm water flow;
 - (2) correctly and accurately indicate all storm water drainage areas within the facility boundary and portions of any drainage area impacted by discharges from surrounding areas;
 - (3) correctly identify locations of storm water collection for sampling which accurately and completely represents all industrial operations at the facility;

- (4) identify locations and descriptions of structural control measures that affect industrial storm water discharges, authorized NSWDS and/or run-on;
 - (5) identify all impervious areas of the facility; and
 - (6) identify locations where materials are directly exposed to precipitation and the locations where significant spills or leaks have occurred;
- (b) The SWPPP omits the **date that it was initially prepared**, as well as the dates of each SWPPP Amendment (Section X.A.10);
- (c) The SWPPP fails to describe in detail ALL **Industrial Materials** handled at the facility, including the locations where the materials are stored, received, shipped and handled, and the quantities and handling frequency of the Industrial Materials (Sections X.A.3, X.F, X.G.1.a).

Specifically, the Facility does not detail the chemical ingredients of the toxic and hazardous Industrial Materials listed on Table 1, including Boran Tim-Bor DPT, Carbo-NT, NW-100 C, NW-200 C, Wood stains and Waste Oil;

- (d) The SWPPP fails to include an adequate description of **Potential Pollutant Sources** and an adequate narrative assessment of all areas of industrial activity with potential industrial pollutant sources, including Industrial Processes, Material Handling and Storage Areas, Dust and Particulate Generating Activities, Significant Spills and Leaks, Non-Storm Water Discharges and Erodible Surfaces (Section X.G)

Specifically, there is a substantial amount of scrap metal and metal parts stored on-site in the “Miscellaneous Accumulation Area” of the Facility. This metal is a Potential Pollutant Source and needs to be identified by type: i.e. iron, steel, etc., and added as additional sampling parameters for metals.

- (e) The SWPPP fails to discuss in detail **Facility operations and all industrial processes** at the facility, including manufacturing, cleaning, maintenance, recycling, disposal, and any other activities related to each industrial process; and the type, characteristics, and approximate quantity of industrial materials used in or resulting from the process (X.G.1.a).

Specifically, Section 4.1.3 of the SWPPP indicates that a 3,000-gallon diesel fuel tank is located on the property. However, the SWPPP fails to detail the industrial use of the diesel fuel in daily facility operations and industrial processes;

- (f) The SWPPP fails to include an adequate discussion of the **Facility’s receiving waters** (Section XI.B.6(e), Section X.G.2.ix), including a discussion of the Santa Ana River and its tributaries for inclusion of appropriate 303(d) listings and TMDLs;

- (g) The SWPPP does not contain the proper **sampling parameters** for all potential pollutants present at the facility due to its industrial operations and industrial materials present at the facility (Section XI.B.6).

Specifically, the SWPPP indicates that large quantities of Diesel Fuel is stored at the facility outdoors. In addition, the SWPPP lists Boran Tim-Bor DPT, Carbo-NT, NW-100 C, NW-200 C, Wood stains and Waste Oil as Industrial Materials stored on-site and used daily in vast quantities, but does not list the main ingredients of these chemical compounds so that they can be included as **additional sampling parameters**, in violation of Section XI.B.6.c of the General Permit. Furthermore, the storage of large amounts of scrap metal and metal parts gives rise to the necessity of sampling for metals specific to the metal stored outdoors at the site without any BMPs or containment.

For example, EDEN's investigation has revealed that the Facility uses at least two different types of Wood Stains, Eco Stain #98 and Eco Stain #8644. Both of these stains include hazardous ingredients such as iron oxides, carbon black, crystalline silica and ethanol;

- (h) The SWPPP fails to include all proper **sampling locations**, in violation of Section XI.B of the General Permit. Specifically, the Site Map indicates numerous areas of roof outfalls where the Facility can and should be collecting storm water run-off sheet flow samples. The sole sampling location indicated on the Site Map is at the Facility's parking lot and far away from the Facility's industrial operations. Additional sampling locations needs to be added near the Facility's maintenance, staining, conveyor and Borate storage areas in the center of the Site, as well as at the south end of the property near the raw lumber storage and unloading docks and where the Facility has large quantities of metal parts stored in the area identified as "Miscellaneous Accumulation Area."
- (i) The SWPPP fails to include an appropriate discussion of **drainage areas and Outfalls** from which samples must be taken during Qualified Storm Events (Section XI). Specifically, Section 3.2 simply states: "Rain falling on the site is directed to the southwest where it flows onto Sultana Avenue." This information is incomplete, false and inaccurate, as there are no Advanced BMPs included in the SWPPP sufficient to direct all rainfall occurring on the nearly 500,000 square foot site to Sultana Avenue;
- (j) The **Advanced BMPs** as identified in the SWPPP are inadequate to comply with the Best Available Technology ("BAT") and Best Conventional Pollutant Control Technology ("BCT") requirements of the General Permit to reduce or prevent

discharges of pollutants in the Facility's storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability, including Exposure Minimization BMPs, Storm Water Containment and Discharge Reduction BMPs or Treatment Control BMPs (Section X.H.2).

Specifically, the SWPPP indicates that the Facility utilizes Advanced BMPs, while at the same time it admits that there are no existing structural BMPs present at the site where necessary to prevent the flow of toxic and hazardous pollutants present at the facility from entering into its Receiving Waters, given the Facility's Industrial Operations;

- (k) The SWPPP fails to include in the SWPPP detailed information about its **Pollution Prevention Team** (Section X.D). Specifically, the SWPPP indicates in Section 2.4 that Plant Manager Robyn Ueberroth is the primary member of its Pollution Prevention Team. However, Robyn Ueberroth is no longer employed with the Facility as its Plant Manager;
- (l) The SWPPP is invalid because it was **not certified and submitted by the Facility's Legally Responsible Person**. Pursuant to Section XII.K of the General Permit, all Permit Registration Documents (PRDs), including SWPPPs, must be certified and submitted by the Facility's authorized Legally Responsible Person.

Failure to develop or implement an adequate SWPPP is a violation of Sections II.B.4.f and X of the General Permit.

B. Failure to Develop, Implement and/or Revise an Adequate Monitoring and Reporting Program Pursuant to the General Permit

Section XI of the General Permit requires Dischargers to develop and implement a storm water monitoring and reporting program ("M&RP") prior to conducting industrial activities. Dischargers have an ongoing obligation to revise the M&RP as necessary to ensure compliance with the General Permit.

The objective of the M&RP is to detect and measure the concentrations of pollutants in a facility's discharge, and to ensure compliance with the General Permit's Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations. An adequate M&RP ensures that BMPs are effectively reducing and/or eliminating pollutants at the Facility, and it must be evaluated and revised whenever appropriate to ensure compliance with the General Permit.

1. Failure to Conduct Visual Observations

Section XI(A) of the General Permit requires all Dischargers to conduct visual observations at least once each month, and sampling observations at the same time sampling occurs at a discharge location.

Observations must document the presence of any floating and suspended material, oil and grease, discolorations, turbidity, odor and the source of any pollutants. Dischargers must document and maintain records of observations, observation dates, locations observed, and responses taken to reduce or prevent pollutants in storm water discharges.

EDEN alleges that between July 7, 2015, and the present, the Discharger has failed to conduct monthly and sampling visual observations pursuant to Section XI(A) of the General Permit.

2. Failure to Collect and Analyze the Required Number of Storm Water Samples

In addition, EDEN alleges that the Discharger has failed to provide the Regional Water Board with the minimum number of annual documented results of facility run-off sampling as required under Sections XI.B.2 and XI.B.11.a of Order No. 2014-0057-DWQ, in violation of the General Permit and the CWA.

Section XI.B.2 of the General Permit requires that all Dischargers collect and analyze storm water samples from two Qualifying Storm Events (“QSEs”) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30).

Section XI.C.6.b provides that if samples are not collected pursuant to the General Permit, an explanation must be included in the Annual Report.

As of the date of this Notice, the Discharger has failed to upload into the SMARTS database system:

- a. One storm water sample analysis for the time period July 1, 2015, through December 31, 2015;
- b. One storm water sample analysis for the time period January 1, 2016, through June 30, 2016;
- c. One storm water sample analysis for the time period July 1, 2016, through December 31, 2016;

- d. Two storm water sample analyses for the time period January 1, 2017, through June 30, 2017;
- e. Two storm water sample analyses for the time period July 1, 2017, through December 31, 2017;
- f. One storm water sample analysis for the time period January 1, 2018, through June 30, 2018;
- g. One storm water sample analysis for the time period July 1, 2018, through December 31, 2018; and
- h. One storm water sample analysis for the time period January 1, 2019, through June 30, 2019.

In fact, the Facility has collected, analyzed and uploaded into SMARTS only six storm water samples since it received General Permit coverage.

3. Failure to Upload Storm Water Sample Analyses within 30 Days

Section XI.B.11.a of the General Permit requires Dischargers to submit all sampling and analytical results for all individual or Qualified Combined Samples via SMARTS within 30 days of obtaining all results for each sampling event.

Fontana Wood Treating failed to upload into SMARTS within 30 days the following sampling and analytical results pursuant to Section XI.B.11.a of the General Permit:

Sample Date	Date of Laboratory Report	Date Uploaded into SMARTS	Length of Time Late
10/5/15	10/16/15	6/27/16	7 months
1/5/16	1/14/16	6/27/16	4 months
1/9/18	1/24/18	7/14/18	5 months

4. Failure to Analyze Storm Water Samples for the Correct Parameters

General Permit sections XI.B.6.a and XI.B.6.b require all Dischargers to analyze for the following three parameters, regardless of facility type: pH, Total Suspended Solids (TSS) and Oil & Grease (O&G).

Section XI.B.6.d of the General Permit requires additional applicable parameters listed in Table 1 of the General Permit (Additional Analytical Parameters), which are related to the facility's Standard Industrial Classification (SIC) code(s).

Furthermore, Section XI.B.6.c of the General Permit requires Dischargers to analyze for **any additional parameters identified by the Discharger on a facility-specific basis that serve as indicators of the presence of all industrial pollutants identified in the Facility's SWPPP.** The Facility's SWPPP indicates the following additional parameters are associated with the Facility's industrial operations: *Diesel Fuel, iron (oxides), crystalline silica, ethanol.*

Fontana Wood Treating's laboratory analytical reports for all samples collected to date fail to analyze for (at the very least) the required parameters of TPH, iron, crystalline silica and ethanol.

C. Falsification of Annual Reports Submitted to the Regional Water Board

Section XXI.L of the General Permit provides as follows:

L. Certification

Any person signing, certifying, and submitting documents under Section XXI.K above shall make the following certification:

"I certify under penalty of law that this document and all Attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system or those persons directly responsible for gathering the information, to the best of my knowledge and belief, the information submitted is, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations."

Further, Section XXI.N of the General Permit provides as follows:

N. Penalties for Falsification of Reports

Clean Water Act section 309(c)(4) provides that any person that knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this General Permit, including reports of compliance or noncompliance shall upon conviction, be punished by a fine of not more than \$10,000 or by imprisonment for not more than two years or by both.

On July 7, 2016, July 14, 2017, July 13, 2018 and July 1, 2019, Fontana Wood Treating submitted its Annual Reports for the Fiscal Years 2015-16, 2016-17, 2017-18 and 2018-19. The Reports were signed under penalty of law by Robert Ueberroth and Charles Holdren.

The Annual Reports included Attachment 1 as an explanation for why Fontana Wood Treating failed to sample the required number of Qualifying Storm Events during the reporting years for all discharge locations, in accordance with Section XI.B. Mr. Ueberroth and Mr. Holdren certified in the Reports, under penalty of perjury, that the required number of samples were not collected by the Facility because allegedly there were insufficient qualifying storm water discharges during the reporting years within scheduled facility operating hours.

Records from the National Oceanic and Atmospheric Administration (NOAA) website/database confirm that during the reporting years in question there were in fact sufficient QSEs occurring near the Facility during or within 12 hours of the start of regular business hours to have allowed Fontana Wood Treating to collect the requisite number of samples during the relevant Reporting Years.

D. Deficient BMP Implementation

Sections I.C, V.A and X.C.1.b of the General Permit require Dischargers to identify and implement minimum and advanced Best Management Practices (“BMPs”) that comply with the Best Available Technology (“BAT”) and Best Conventional Pollutant Control Technology (“BCT”) requirements of the General Permit to reduce or prevent discharges of pollutants in their storm water discharge in a manner that reflects best industry practice, considering technological availability and economic practicability and achievability.

The Facility’s SWPPP clearly indicates a complete lack of advanced BMPs necessary to prevent the discharges of pollutants from Facility Operations into the Facility’s Receiving Waters. Specifically, the Facility has no storm water containment system (detention or retention ponds), does not treat its polluted storm water before it leaves the Facility and does not have proper enclosures or structural BMPs to prevent rainfall from contacting the toxic, dangerous and hazardous chemicals contained in its treated lumber products. Furthermore, the Facility deliberately avoids monitoring and sampling in the areas likely to be contaminated by their Industrial Processes, nor does it sample its polluted storm water run-off for the proper parameters likely to be in the storm water run-off.

EDEN alleges that Fontana Wood Treating has been conducting industrial activities at the site without adequate BMPs to prevent resulting non-storm water discharges. **Non-storm water discharges resulting from these activities are not from sources that are listed among the authorized non-storm water discharges in the General Permit, and thus are always prohibited.**

Fontana Wood Treating’s failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

On February 5, 2019, Regional Water Board inspectors conducted an inspection of the facility as a result of a complaint of an illegal discharge reported by San Bernardino County and discovered a large amount of reddish storm water runoff flowing from the Facility westward into Beech Avenue. There was a fair amount of rain on that date.

The discharge was later found to be from the Facility's wood staining processes. Specifically, on a rainy day in early February 2019, after Fontana Wood Treating sprayed wood stain on large piles of pressure treated lumber indoors, the lumber was then loaded onto conveyor belts that led outdoors, exposed to the elements, and without any BMPs in place to prevent the chemicals in the treated wood from leeching out of the lumber after being contacted by rainfall. Toxic and hazardous wood treating chemicals subsequently flowed into the Facility's storm drains and out into the street and neighboring parcels, eventually making its way into the Santa Ana River.

Furthermore, the Safety Data Sheets for the Wood Stain (Eco Waterborne Stain #98 and Eco Waterborne Stain #8644) indicate that these wood staining chemicals contain **hazardous, toxic and potentially carcinogenic materials** such as *Yellow Iron Oxide, Red Iron Oxide, Carbon Black, Crystalline Silica, Synthetic Aqueous Copolymers, ethanol and Poly (oxy-1,2-ethanediyl, a-Octylphenyl-w-hydroxy)*.

E. Discharges In Violation of the General Permit

Except as authorized by Special Conditions of the General Permit, Discharge Prohibition III(B) prohibits permittees from discharging materials other than storm water (non-storm water discharges) either directly or indirectly to waters of the United States. Unauthorized non-storm water discharges must be either eliminated or permitted by a separate NPDES permit.

Information available to EDEN indicates that unauthorized non-storm water discharges occur at the Facility due to inadequate BMP development and/or implementation necessary to prevent these discharges.

EDEN alleges that the Discharger has discharged storm water containing excessive levels of pollutants from the Facility to its Receiving Waters during at least every significant local rain event over 0.1 inches in the last five (5) years.

Furthermore, on February 5, 2019, the Facility experienced a substantial and significant unauthorized non-storm water discharge as indicated above.

EDEN hereby puts the Discharger on notice that each time the Facility discharges prohibited non-storm water in violation of Discharge Prohibition III.B of the General Permit is a separate and distinct violation of the General Permit and Section 301(a) of the Clean Water Act, 33 U.S.C. § 1311(a).

1. Discharges in Excess of Technology-Based Effluent Limitations

The Industrial General Permit includes technology-based effluent limitations, which prohibit the discharge of pollutants from the Facility in concentrations above the level commensurate with the application of best available technology economically achievable (“BAT”) for toxic pollutants and best conventional pollutant control technology (“BCT”) for conventional pollutants. (General Permit, Section X.H.)

The EPA has published Benchmark values set at the maximum pollutant concentration levels present if an industrial facility is employing BAT and BCT, as listed in Table 2 of the General Permit. The General Permit includes “Numeric Action Levels” (“NALs”) derived from these Benchmark values; however, the NALs do not represent technology-based criteria relevant to determining whether an industrial facility has implemented BMPs that achieve BAT/BCT. (General Permit, Section I.M. (Finding 62)).

Fontana Wood Treating’s exceedances of Benchmark values identified in the table listed below, indicate that it has failed and is failing to employ measures that constitute BAT and BCT, in violation of the requirements of the Industrial General Permit. EDEN alleges and notifies Fontana Wood Treating that its storm water discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark values as listed below.

These allegations are based on the Facility’s self-reported data submitted to the Regional Water Board. Self-monitoring reports under the Permit are deemed “conclusive evidence of an exceedance of a permit limitation.” *Sierra Club v. Union Oil*, 813 F.2d 1480, 1492 (9th Cir. 1988).

The Discharger’s ongoing discharges of storm water containing levels of pollutants above EPA Benchmark values and BAT- and BCT-based levels of control also demonstrate that it has not developed and implemented sufficient BMPs at the Facility. EPA Benchmarks are relevant to the inquiry as to whether a facility has implemented BMPs. [*Cal. Sportfishing Prot. Alliance v. River City Waste Recyclers, LLC* (E.D.Cal. 2016) 205 F.Supp.3d 1128; *Baykeeper v. Kramer Metals, Inc.* (C.D.Cal. 2009) 619 F.Supp.2d 914, 925; *Waterkeepers Northern California v. AG Industrial Mfg. Inc.* (9th Cir. 2004) 375 F.3d 913, 919 (concentration levels in excess of EPA benchmarks are evidence supporting the citizen plaintiff’s contention that defendant did not have appropriate BMPs to achieve BAT/BCT).]

Fontana Wood Treating’s failure to develop and/or implement adequate BMPs and pollution controls to meet BAT and BCT at the Facility violates and will continue to violate the CWA and the Industrial General Permit each day the Facility discharges storm water without meeting BAT and BCT.

2. Discharges in Excess of Receiving Water Limitations

In addition to employing technology based effluent limitations, the Industrial General Permit requires dischargers to comply with Receiving Water Limitations. Receiving Water Limitations found in Section VI(B) of the General Permit prohibit storm water discharges and authorized non-storm water discharges to surface water that adversely impact human health or the environment.

Discharges that contain pollutants in concentrations that exceed levels known to adversely impact aquatic species and the environment also constitute violations of the General Permit Receiving Water Limitation.

Applicable Water Quality Standards (“WQS”) are set forth in the California Toxics Rule (“CTR”) and the Regional Basin Plan. Exceedances of WQS are violations of the Industrial General Permit, the CTR, and the Basin Plan. Industrial storm water discharges must strictly comply with WQS, including those criteria listed in the applicable Basin Plan. (See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).)

Information available to EDEN indicates that the Facility’s storm water discharges contain elevated concentrations of specific pollutants, as listed below. These polluted discharges can be acutely toxic and/or have sub-lethal impacts on the avian and aquatic wildlife in the Receiving Waters. Discharges of elevated concentrations of pollutants in the storm water from the Facility also adversely impact human health. These harmful discharges from the Facility are violations of the General Permit Receiving Water Limitation.

Further, EDEN puts Fontana Wood Treating on notice that the Receiving Water Limitations are independent requirements that must be complied with, and that carrying out the process triggered by exceedances of the NALs listed at Table 2 of the General Permit does not amount to compliance with the Receiving Water Limitations. The NALs do not represent water quality-based criteria relevant to determining whether an industrial facility has caused or contributed to an exceedance of a WQS, or whether it is causing adverse impacts to human health or the environment.

Section XX.B. of the General Permit provides that when a facility’s industrial storm water discharges and/or authorized NSWDS are determined to contain pollutants that are in violation of Receiving Water Limitations contained in Section VI, the Discharger must conduct a facility evaluation to identify pollutant source(s) within the facility that are associated with industrial activity and whether the BMPs described in the SWPPP have been properly implemented, assess its current SWPPP, and certify via SMARTS any additional BMPs identified which are necessary in order to meet the Receiving Water Limitations.

EDEN alleges that from at least October 5, 2015, to the present, Fontana Wood Treating has been in violation of the Receiving Water Limitations provision of Section VI of the General

Permit, as evidenced by its exceedances of the applicable Water Quality Standards set forth in the Regional Basin Plan and the California Toxic Rule, as indicated below.

Further, Fontana Wood Treating has failed to comply with Section XX.B of the General Permit. Failure to comply with the additional Water Quality-Based Corrective Action requirements listed in Section XX.B is an additional violation of the General Permit.

The following discharges of pollutants from the Facility have violated Discharge Prohibitions and Receiving Water Limitations of the General Permit and are evidence of ongoing violations of Effluent Limitations:

Sample Collection Date/ Outfall	Parameter	Unit	Sample Analysis Result	EPA Benchmark NAL average/ instantaneous Value	BASIN PLAN/CCR T22 Benchmark NAL value
2015-2016 Reporting Year					
10/5/15	TSS	mg/L	120	100/400	n/a
10/5/15	Ammonia		.86	2.14	.098
10/05/15	Copper	mg/L	.16	.0332	.037
1/5/16	Copper	mg/L	.065	.0332	.037
2016-17 Reporting Year					
12/16/16	Copper	mg/L	.042	.0332	.037
12/16/16	pH	S.U.	5.5	Between 6-9	
2017-18 Reporting Year					
1/9/18	Copper	mg/L	.18	.0332	.037
1/9/18	pH	S.U.	5.0	6-9	
2018-19 Reporting Year					
11/29/18	pH	S.U.	5.5	6-9	
1/14/19	pH	S.U.	5.5	6-9	

Based on the results summarized above, Fontana Wood Treating entered Level 1 for *Copper* on July 1, 2017; Level 1 for *pH* on July 1, 2019, and Level 2 for *Copper* on July 1, 2018.

F. Failure to Comply with Facility SWPPP

The Facility SWPPP indicates that the Facility will collect and analyze storm water samples from two qualified storm events within the first half of each reporting year (July 1 to

December 31) and two QSEs within the second half of each reporting year (January 1 to June 30).

As detailed above, the Facility missed collecting storm water samples in the reporting years 2015-16, 2016-17 and 2017-18, and 2018-19.

Furthermore, Section X.H.g of the General Permit requires all Dischargers to develop and implement management procedures to ensure that appropriate staff implements all elements of the Facility's SWPPP, including the Monitoring Implementation Plan.

G. Failure to Update SWPPP

As discussed in herein, the Facility was inspected on February 6, 2019 by the Regional Water Board after it was discovered that there had been a substantial unauthorized non-storm water discharge of toxic chemicals at the Facility on or about February 5, 2019.

Section XI.B of the General Permit provides that all Facilities must revise their on-site SWPPP whenever necessary. Furthermore, all Dischargers are to upload to SMARTS a revised SWPPP within thirty (30) days whenever the SWPPP contains significant revisions; and within ninety (90) days when the SWPPP contains routine revisions.

Fontana Wood Treating was required to update Section 4.4 of its SWPPP (Unauthorized Storm Water Dischargers, Spills and Leaks) and upload it to SMARTS no later than May 6, 2019 but failed to do so.

In addition, the Facility was required to update its Pollution Prevention Team members within ninety (90) days of the date that any member left the employ of the Facility, which it did not.

H. Failure to Properly Train Employees/Facility Pollution Prevention Team

Section X.D.1 of the General Permit requires each Facility to establish a Pollution Prevention Team responsible for assisting with the implementation of the requirements of the General Permit. The Facility is also required to identify alternate team members to implement the SWPPP and conduct required monitoring when the regularly assigned Pollution Prevention Team members are temporarily unavailable (due to vacation, illness, out of town business, or other absences).

Section X.H.f of the General Permit also requires that each Facility ensure that all Pollution Prevention Team members implementing the various compliance activities of the General Permit are properly trained in at least the following minimum requirements: BMP implementation, BMP effectiveness evaluations, visual observations, and monitoring activities. Further, if a Facility enters Level 1 status, appropriate team members must be trained by a QISP.

There is no evidence that the Facility's current Pollution Prevention Team has been fully trained by a QISP after it entered Level 1 status.

Based on the foregoing violations, it is clear that Fontana Wood Treating has either not properly established its Pollution Prevention Team, or has not adequately trained its Pollution Prevention Team, in violation of Sections X.D.1 and X.H.f of the General Permit.

Fontana Wood Treating may have had other violations that can only be fully identified and documented once discovery and investigation have been completed. Hence, to the extent possible, EDEN includes such violations in this Notice and reserves the right to amend this Notice, if necessary, to include such further violations in future legal proceedings.

IV. THE PERSON OR PERSONS RESPONSIBLE FOR THE VIOLATIONS

The entities responsible for the alleged violations are Fontana Wood Treating, Inc., as well as employees of the Facility responsible for compliance with the CWA, and CanWel Building Materials Group, Ltd, and its CEO Amar S. Doman.

V. THE DATE, DATES, OR REASONABLE RANGE OF DATES OF THE VIOLATIONS

The range of dates covered by this 60-day Notice is from at least July 7, 2015, to the date of this Notice. EDEN may from time to time update this Notice to include all violations which may occur after the range of dates covered by this Notice. Some of the violations are continuous in nature; therefore, each day constitutes a violation.

VI. CONTACT INFORMATION

The entity giving this 60-day Notice is Eden Environmental Citizen's Group ("EDEN").

Aiden Sanchez
EDEN ENVIRONMENTAL CITIZEN'S GROUP
2151 Salvio Street #A2-319
Concord, CA 94520
Telephone: (925) 732-0960
Email: Edenenvcitizens@gmail.com (emailed correspondence is preferred)
Website: edenenvironmental.org

To ensure proper response to this Notice, all communications should be addressed to EDEN's General Counsel, Hans W. Herb.

HANS W. HERB
Law Offices of Hans W. Herb
P.O. Box 970
Santa Rosa, CA 95402
Telephone: (707) 576-0757
Email: hans@tankman.com

IV. RELIEF SOUGHT FOR VIOLATIONS OF THE CLEAN WATER ACT

CWA §§ 505(a)(1) and 505(f) provide for citizen enforcement actions against any “person,” including individuals, corporations, or partnerships, for violations of NPDES permit requirements and for un-permitted discharges of pollutants. 33 U.S.C. §§ 1365(a)(1) and (f), §1362(5).

Pursuant to Section 309(d) of the Clean Water Act, 33 U.S.C. § 1319(d), and the Adjustment of Civil Monetary Penalties for Inflation, 40 C.F.R. § 19.4, each separate violation of the Clean Water Act subjects the violator to a penalty for all violations occurring during the period commencing five (5) years prior to the date of the Notice Letter. **These provisions of law authorize civil penalties of \$37,500.00 per day per violation for all Clean Water Act violations after January 12, 2009, and \$51,570.00 per day per violation for violations that occurred after November 2, 2015.**

In addition to civil penalties, EDEN will seek injunctive relief preventing further violations of the Clean Water Act pursuant to Sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), declaratory relief, and such other relief as permitted by law.

Lastly, pursuant to Section 505(d) of the Clean Water Act, 33 U.S.C. § 1365(d) and California Code of Civil Procedure §1021.5, EDEN will seek to recover its pre and post-litigation costs, including all attorneys’ and experts’ fees and costs incurred (see *Southern California Alliance of Publicly Owned Treatment Works v. U.S. Environmental Protection Agency* (9th Cir. 2017) 853 F.3d 1076; *Vasquez v. State of California* (2008) 45 Cal.4th 243).

V. CONCLUSION

The CWA specifically provides a 60-day notice period to promote resolution of disputes. EDEN encourages California Cascade Building Material or CanWel Building Material’s counsel to contact **EDEN’s counsel** within 20 days of receipt of this Notice to initiate a discussion regarding the violations detailed herein. Please do not contact EDEN directly.

During the 60-day notice period, EDEN is willing to discuss effective remedies for the violations; however, if California Cascade/CanWel Building Materials wishes to pursue such discussions in the absence of litigation, it is suggested those discussions be initiated soon so that they may be completed before the end of the 60-day notice period. EDEN reserves the right to file a lawsuit if discussions are continuing when the notice period ends.

Very truly yours,

A handwritten signature in blue ink, appearing to read 'Aiden Sanchez', with a stylized loop at the end.

AIDEN SANCHEZ
Eden Environmental Citizen's Group

Copies to:

Andrew Wheeler: wheeler.andrew@Epa.gov

Administrator, U.S. Environmental Protection Agency

State Water Resources Control Board
Eileen Sobeck, Executive Director
eileen.sobeck@waterboards.ca.gov

Mayumi Okamoto, Office of Enforcement: Mayumi.Okamoto@waterboards.ca.gov
stormwater@waterboards.ca.gov

Regional Administrator, U.S. EPA – Region 9
Jennifer Pierce: pierce.jennifer@epa.gov
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